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CITY OF BOSTON



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April 10, 1996

By Federal Express

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: **CS DOCKET NO. 96-46**
OPEN VIDEO SYSTMS

To Whom It May Concern:

On behalf of the City of Boston, I am enclosing one original and four (4) copies of Reply Comments in connection with the above-referenced matter: the FCC's Notice of Proposed Rulemaking in the "Matter of Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems."

Please contact the undersigned if you have any questions regarding the enclosed Reply Comments.

Sincerely,

Scott Dunlap, Director
Office of Cable Communications

Enclosures

cc: Larry Walke, Cable Services Bureau (1 copy)
International Transcription Services, Inc. (1 copy)
Peter J. Epstein, Esquire

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
Implementation of Section 302 of)	
the Telecommunications Act of 1996)	CS Docket No. 96-46
)	
Open Video Systems)	

REPLY COMMENTS OF THE CITY OF BOSTON

The City of Boston respectfully submits these reply comments to the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding.

I. **INTRODUCTION**

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking (FCC96-99) ("Notice"), requesting comment on how it should implement the regulatory framework for open video systems ("OVS"). In response, the National League of Cities, the National Associations of counties, the U.S. Conference of Mayors, Montgomery County, and several cities (hereinafter "NLC"), filed joint comments containing specific proposals for implementing the framework.

In their comments, NLC identified four key principles that must guide the Commission in formulating its rules. First, the Commission's rules regarding the PEG and other Title VI requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs and interests. Second, the Commission must adopt nondiscrimination provisions that ensure that all programmers will have truly open and affordable access to OVS and that prevent OVS from becoming a cable system in disguise. Third, the 1996 Telecommunications Act does not permit cable operators to become OVS operators. Fourth, the Commission's rules must acknowledge the property interest that local governments hold in the local public rights-of-way.

The City of Boston strongly supports NLC's comments and urges the Commission to follow these four principles in formulating OVS rules.

II. DISCUSSION

I. PEG ACCESS REQUIREMENTS

The Commission's statutory mandate in adopting PEG requirements for OVS is clear. As NLC notes, the Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators. To fulfill these mandates, the Commission should, as proposed by NLC, require OVS operators "to match or negotiate," that is, to match each incumbent cable operator's PEG obligations, or to negotiate agreements acceptable to the affected communities.

The record in this proceeding demonstrates that local government as franchising authorities and PEG programmers - play a critical role in ensuring that local communications needs and interests are met. ¹Moreover, local governments, as the National Cable Television Association states, "²are in the best position to deliver on the Act's intent to accomplish PEG access over open video systems.

¹ See, e.g. Comments of the Below-Named Political Subdivisions of the State of Minnesota at 7 (franchising authorities have "considerable experience in successfully negotiating, creating and implementing...PEG obligations"); Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 34 ("The local franchising authority is the governmental entity best positioned to appreciate community needs and most experienced in the implementation of PEG access rules"); and Joint Comments of Cablevision System Corporation and the California Cable Television Association at 21 ("Congress certainly understood that PEG access requirements are now imposed by localities to meet critical localism goals").

² Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 33 See also, Comments of MFS Communications Company, Inc. at 27 ("The manner in which OVS operators and/or their customer programmers comply with the PEG obligations should generally be worked out between the programmer and the local government entity that oversees the implementation of these rules for cable operators").

PEG access programming is of great importance to the City of Boston. There is a great deal of PEG Access programming produced each year in Boston. This includes thousands of programs produced by public access producers and non-profit organizations which are cablecast on three (3) access channels. In addition, a non-profit access organization, funded by the cable television operator in Boston, produces a nightly news program, and other local programming of interest to Bostonians. There are literally thousands of community volunteers in Boston who help to produce this local programming, including hundreds of young people learning valuable television production skills.

The City of Boston itself, through its Office of Cable Communications, produces hundreds of hours of programming every year for cable subscribers, covering municipal events, City Council hearings, public hearings, political campaigns, etc. Cable subscribers in Boston have come to rely on this coverage of City government.

By adopting NLC's proposal, the Commission will ensure that PEG access programming continues to serve community needs and interests in the City of Boston. This will also satisfy the Commission's statutory mandate to impose equivalent PEG access obligations on OVS and cable television operators.

II) Cable Operators and OVS

The Commission has asked for comments on "...Whether an open video system operator should be permitted to limit or preclude, in absence of Commission regulations, the competing cable operator's ability to obtain capacity on the open video system, especially in light of Congress' intent that open video systems would introduce vigorous competition to the marketplace." {See Commission Rulemaking, at paragraph 15} The City believes that there are several reasons why an existing cable operator should **not** be permitted to use open video system capacity.

First, allowing cable operators to migrate their services to an OVS will lessen competition, not heighten it. The Commission references Congress' intent that open video systems will "...*introduce* vigorous competition in entertainment and information markets." {emphasis added} {See Conference Report at page 178}. The City believes that the word *introduce* is of key importance in this regard. That is, Congress intended that open video systems would *open-up* markets to new video entrants. Allowing existing cable operators to move to an open video system platform will result in *less* competition, not more. Such a result runs directly counter to Congressional intent and must not be countenanced.

Second, cable operators already operate in virtually every community in the United States under a comprehensive regulatory scheme in place. Cable operators thus do not need new regulatory provisions to help them to get into the video programming business. They have been in the business for decades already. Instead, the Commission should focus on making open video systems available to *new* entrants, which will then accomplish the

Congressional goal of fostering competition in the marketplace, not merely reshuffling existing players onto different communications platforms.

Third, allowing a cable operator to occupy limited space on an open video system will further reduce competition in the market place, by reducing the number of channels available to potential new competitors in the future.³ Again, allowing this would run counter to Congressional intent.

Fourth, cable operators have spent hundreds of millions of dollars to build, upgrade and rebuild cable television plants. What will happen to such facilities, and the investment paid for by cable subscribers, if cable operators can merely “migrate” their service offerings to an open video system platform? Will existing cable subscribers then be obligated to pay other costs incurred in the cable operator migrating to an open video service platform? What would happen to the existing facilities?

III) The Telecommunications Act Does Not Permit Cable Operators To Become OVS Operators

The Commission seeks comment regarding whether cable operators may become open video system operators. {See paragraph 64} The City does not believe that the language of the Telecommunications Act of 1996 allows cable television operators, or other non-local exchange carriers, to become open video system operators:

A local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section.

This language explicitly allows “local exchange carriers” to provide cable service through an open video system. Cable television operators are not local exchange carriers.

The City also believes that the difference in terminology in Section 653(a)(1) is, in fact, significant. That is, the local exchange carriers may provide *cable service* through an open video system, while cable operators and others, pursuant to Commission regulations, may provide *video programming* through an open video system. The City believes that Congress intends that local exchange carriers may construct open video facilities, while non-local exchange carriers may only provide video programming on such facilities. This is consistent with Congress’ intent to open up competition in the local marketplace.

³ See Comments of MFS Communications Company, Inc. at 24 (“Permitting the cable television operator or its programming affiliates to distribute programming over a competing OVS platform would permit a cable operator, which has its own franchise to construct facilities, to tie up capacity on a competitor’s network...”)

Allowing cable operators, who already have extensive facilities in place, to become open video system providers is inconsistent with this objective and will thwart new competition, not enhance it.

IV) Commission Regulations Must Acknowledge Municipal Interests in Rights-Of-Way

As Congress has stated in the Telecommunications Act of 1996, local governments have a vital interest in the public rights-of-way. The City urges the Commission to recognize these interests as well. As part of the instant Rulemaking, local government interests in the public rights-of-way should be explicitly clarified vis-a-vis open video systems.

III. CONCLUSION

The City of Boston respectfully requests the Commission to adopt a framework for OVS consistent with the proposals and principles recommended by NLC et al. in their comments.

Respectfully submitted,

By: 

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